

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE

PREFERRED TAX SERVICE, INC., :
Plaintiff, : Civil Action No.
v. : 1:05-CV-00872-SLR
THE TAX AUTHORITY, INC., et al., :
Defendants. :

RESPONSE OF DEFENDANTS THE TAX AUTHORITY, INC.
AND KENNETH M. LEES TO PLAINTIFF'S
MOTION TO SEAL CONFIDENTIAL DOCUMENTS.

Defendants The Tax Authority, Inc. ("Tax Authority"), and Kenneth M. Leese ("Leese"), by their counsel, respond to Plaintiff's Motion to Seal Confidential Documents [D.I. No. 26], and state as follows:

1.-2. Admitted.

3. Denied as stated. It is admitted that Tax Authority and Leese filed a Motion to Dismiss [D.I. No. 9], supporting Brief, as amended [D.I. Nos. 10 and 13] and Appendix [D.I. No. 11.] It is also admitted that defendants included in the Appendix a copy of a document described as "Customer List" ("Document"). Plaintiff gave the Document to defendants in the course of the parties' negotiations for Tax Authority's purchase of plaintiff's business, without any confidentiality agreement or other restriction. Defendants lack knowledge or information sufficient to form a belief as to the truth of plaintiff's characterizations of the Document, which are denied.

4. Denied as stated. It is admitted that Tax Authority and Leese filed a Brief in Opposition to Plaintiff's Motion for Temporary Restraining Order the TRO Motion with a supporting Appendix [D.I. No. 14]. It is also admitted that a copy of the Document was included in the Appendix and described as a "List of Revenues" in light of plaintiff's allegations concerning the nature of the Document and the information contained in the Document (which does not include any contact information for the persons described as plaintiff's customers). By way of further response, defendants incorporate by reference the averments of Paragraph 3 of this Response.

5.-6. Denied. The allegations of Paragraphs 5 and 6 of the Motion constitute conclusions of law to which no response is required. To the extent such allegations are deemed to constitute facts, they are denied.

7.-9. Denied. The allegations of Paragraphs 7 through 9 of the Motion constitute conclusions of law to which no response is required. To the extent such allegations are deemed to constitute facts, they are denied. Defendants incorporate by reference the averments of Paragraphs 3 and 4 of this Response. By way of further response, defendants deny that the Document constitutes a trade secret, particularly to the extent that plaintiff disclosed the Document without any confidentiality agreement or other restriction. It is further denied that defendants have improperly disclosed or used the Document in any way, or that plaintiff's disclosure of the Document has caused it to suffer any harm. However,

defendants do not object to the Document being sealed solely to the extent that it apparently refers to the social security numbers of persons who are not parties to this action.

Sealing such information has no bearing on defendants' Motion to Dismiss, which should be granted as the Court lacks subject matter jurisdiction. Moreover, even to the extent this action is not dismissed, plaintiff's Motion for Temporary Restraining Order should be denied without regard to the sealing of this information.

WHEREFORE, for the limited reasons stated in this Response, defendants do not object to the entry of an Order sealing the Document filed at D.I. No. 11 at A1-A17, and D.I. No. 14 at A10-A26.



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